

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM JEFFREY GILLIAM,
Plaintiff,

No C 02-3382 VRW

ORDER

v

SONOMA COUNTY, CITY OF SANTA
ROSA, CALIFORNIA, BOB SMITH,
TIMOTHY WERNER, J PEDERSON,
MIKELL BRYAN, JOAN COOPER and
GENERAL DYNAMICS CORPORATION,

Defendants.

_____/

Defendant General Dynamics (GD) has filed a motion for FRCP 11 sanctions and to declare plaintiff William Gilliam ("Gilliam") a vexatious litigant (Doc #74). Although the court agrees with GD that Rule 11 sanctions are substantively warranted and that it has jurisdiction to entertain such a motion, the court nonetheless concludes that GD's failure to comply with the safe harbor provision of Rule 11 is fatal to its motion. Declaring Gilliam a vexatious litigant and enjoining him from further vexatious conduct in this (or any similar) suit is, however, within

1 the court's jurisdiction, procedurally proper and substantively
2 warranted. Accordingly, GD's motion is GRANTED IN PART.

3
4 I

5 Gilliam filed the original complaint in this action on
6 July 15, 2002. It included federal civil rights claims under 42 §§
7 1983 and 1985. Doc #1. After defendants GD and Sonoma County (the
8 County) filed motions to dismiss (Doc ##9, 19), the court dismissed
9 Gilliam's original complaint as time-barred (Doc #31). On July 3,
10 2003, Gilliam filed an amended complaint that asserted federal
11 causes of action based on essentially the same allegations as those
12 in the original complaint. Doc #33. GD and the County again filed
13 motions to dismiss (Doc ##35, 39). GD also requested attorney fees
14 pursuant to 42 USC § 1988(b), which permits such an award to a
15 prevailing civil rights defendant if a plaintiff's claims are
16 unreasonable or vexatious. On November 17, 2003, the court granted
17 defendants' motions to dismiss for the same reasons it had
18 dismissed the original complaint. Doc #48. In that same order,
19 the court granted GD's request for attorney fees on the basis that
20 Gilliam's amended complaint was groundless and without foundation.
21 Because the court required further briefing before determining the
22 appropriate amount of attorney fees to award, the court ordered GD
23 to submit a supplemental memorandum by December 8, 2003. The court
24 further ordered Gilliam submit any objections to GD's supplemental
25 memorandum by December 22, 2003.

26 GD submitted its supplemental memorandum on December 8,
27 2003. See Doc ##49, 50. As of 5:00 pm on December 22, 2003, the
28 court had received nothing from Gilliam. The court thus issued an

1 order awarding GD \$31,771.25 in reasonable attorney fees and costs
2 of \$2,782.69. Doc #51.

3 Gilliam, however, lodged his objections with the court at
4 approximately 5:30 pm on December 22, 2003. Doc #53. The court
5 concluded that it would be preferable to consider Gilliam's
6 objections to GD's supplemental filings (despite the fact that they
7 were filed at the last minute), rather than keeping the order
8 granting attorney fees in effect. Accordingly, the court suspended
9 its December 22, 2003, order awarding GD its reasonable attorney
10 fees and costs. Doc #52. The court invited GD to submit a reply
11 to Gilliam's objections by January 15, 2004, at which time the
12 court would consider the matter submitted. The court received GD's
13 reply on January 15, 2004. Doc #59.

14 On January 22, 2004, the court issued an order
15 reinstating its previous order granting GD its attorney fees and
16 costs in the amount of \$34,553.94. Doc #60. In that order, the
17 court noted that all of Gilliam's arguments in his objections were
18 based not on whether the fees requested were reasonable, but on
19 whether the court should have awarded GD its fees in the first
20 place. Because the court had conclusively decided that issue in
21 its November 17, 2003, order, Gilliam's attempt to reopen that
22 issue was improper. 1/22/04 Order (Doc #60) at 5:3-6:28. The
23 court nevertheless marched through Gilliam's arguments to
24 reconsider the decision to award fees and found them all meritless.
25 Id at 7:2-13:14.

26 Shortly after reinstating the December 22, 2003, order
27 determining the proper amount of attorney fees and costs, the court
28 received three new motions from Gilliam. On January 30, 2004,

1 Gilliam moved the court to recuse itself and to alter or amend the
2 judgment against Gilliam pursuant to FRCP 59(e). Doc ##61, 62. On
3 February 9, 2004, Gilliam filed a request for judicial notice and a
4 motion for sanctions against GD. Doc #63. None of these motions
5 was noticed for hearing. On February 9 and 20, 2004, GD filed
6 oppositions to Gilliam's new motions and requested that the court
7 sanction Gilliam and declare him a vexatious litigant. Doc ##64,
8 65.

9 On April 14, 2004, the court issued an order denying all
10 of Gilliam's motions. Doc #68. The court found that Gilliam's
11 motion to recuse was frivolous and likely interposed for an
12 improper purpose, 4/14/04 Order (Doc #68) at 6:2-12:27, concluded
13 that Gilliam's motion to alter or amend the judgment was "frivolous
14 at best and false and disingenuous at worst," see id at 13:2-20:11,
15 and denied Gilliam's motion for sanctions as meritless. Id at
16 20:13-21:19. Nevertheless, the court declined to grant GD's
17 request for sanctions or to declare Gilliam a vexatious litigant
18 because GD had not filed its request as a separate motion noticed
19 on the court's regular motion calendar, as is required by Civ L R
20 7-2 and 7-8. Id at 21:21-22:27. The court advised Gilliam,
21 however, that GD appeared to have ample basis to make such a motion
22 and cautioned him against lodging further frivolous motions with
23 the court. Id at 23:8-11.

24 Several days later, Gilliam filed a petition for
25 bankruptcy in the United States Bankruptcy Court for the Northern
26 District of California. See In re Gilliam, No 04-42153 (Bankr N D
27 Cal) (Liguori Decl (Doc #73) ¶5, Exh C). The bankruptcy court
28 eventually dismissed Gilliam's petition, finding that the petition

1 had been filed in bad faith and that Gilliam had made false
2 statements under penalty of perjury. Id. The bankruptcy court
3 prohibited Gilliam from filing another bankruptcy for a period of
4 180 days. Id. Meanwhile, the Sonoma County superior court entered
5 a vexatious litigant order against Gilliam on April 20, 2004. See
6 Liguori Decl (Doc #73) ¶4, Ex B.

7 On May 13, 2004, Gilliam filed a notice of appeal of the
8 court's April 14, 2004, order. Doc #70. Subsequently, on June 16,
9 2004, GD filed a duly noticed, separately filed motion for
10 sanctions and to declare Gilliam a vexatious litigant. Doc #72.
11 GD filed a corrected version of the motion on July 12, 2004. Doc
12 #74. The motion was set for a September 2, 2004, hearing.

13 Gilliam failed to oppose the motion in a timely fashion,
14 so on August 16, 2004, the court vacated the September 2, 2004,
15 hearing and issued an order to show cause (OSC) why the motion
16 should not be treated as unopposed. On August 19, 2004, the court
17 received an opposition from Gilliam to the motion for sanctions.
18 Doc #75. The court invited GD to file a reply brief, Doc #76,
19 which GD did on September 10, 2004, Doc #77.

20 II

21 The first matter the court must address is whether
22 Gilliam has discharged the August 16, 2004, OSC. Gilliam filed his
23 opposition to GD's motion on August 19, 2004. Doc #75. In that
24 opposition, Gilliam makes several arguments addressing why GD's
25 motion should not be granted. Based on Gilliam's response, the
26 court is satisfied that Gilliam wishes to oppose the motion and has
27 raised arguments that address the merits of the motion.
28

1 Gilliam's August 19 opposition does not, however, address
2 Gilliam's reasons for failing to oppose GD's motion in a timely
3 manner. Given that the court issued the August 16 OSC only days
4 before receiving Gilliam's August 19 opposition, the court suspects
5 that the OSC and the opposition simply crossed in the mail. In
6 other words, the opposition probably does not contain a response to
7 the OSC because Gilliam probably had not received the OSC at the
8 time he drafted and filed the opposition.

9 The court remains troubled by Gilliam's failure to file
10 the opposition in a timely fashion. Pursuant to Civ L R 7-3,
11 Gilliam was required to serve and file his opposition no later than
12 21 days before the September 2 hearing date. Gilliam should be
13 aware of this rule, as this is not the first time that the court
14 has issued an OSC to him based on his failure to file opposition
15 papers on time. Nevertheless, the court believes that it is
16 preferable to evaluate GD's motion on its merits, rather than
17 ruling against Gilliam based on his procedural mistakes. See
18 Gorlikowski v Tolbert, 52 F3d 1439, 1444 (7th Cir 1995); Nilsson,
19 Robbins, Dalgarn, Berliner, Carson & Wurst v Louisiana Hydrolec,
20 854 F2d 1538, 1546 (9th Cir 1988). Accordingly, the OSC is
21 DISCHARGED and the court will consider Gilliam's late-filed
22 opposition.

23
24 III

25 In light of the pending appeal, the court must take up
26 the issue of its jurisdiction to entertain GD's motion for
27 sanctions or issue a vexatious litigant order.

28 GD bases its motion for Rule 11 sanctions on Gilliam's

1 three motions that the court denied on April 14, 2004, and bases
2 its motion for a vexatious litigant order on Gilliam's lengthy and
3 abusive litigation history. GD argues that, despite the fact that
4 Gilliam has filed a notice of appeal, the court retains
5 jurisdiction to decide the instant motion. Mot Sanctions (Doc #74)
6 at 6:6-25.

7 Although an appeal typically divests the district court
8 of jurisdiction, that rule is not absolute and is a rule of
9 judicial economy designed simply to avoid the confusion and
10 inefficiency of two courts determining the same issues at the same
11 time. Masalosalo v Stonewall Ins Co, 718 F2d 955, 956 (9th Cir
12 1983); see also Cal Dep't of Toxic Substances Control v Commercial
13 Realty Projects, Inc, 309 F3d 1113, 1120-21 (9th Cir 2002) (finding
14 that divestment upon notice of appeal is "a rule of judicial
15 economy and not one that strips the district court of subject
16 matter jurisdiction"). The district court thus retains
17 jurisdiction to determine collateral matters, such as attorney fee
18 awards or the modification of injunctions. Natural Resources
19 Defense Council v Southwest Marine, Inc, 242 F3d 1163, 1166 (9th
20 Cir 2001); Masalosalo, 718 F2d at 957. An issue may be
21 characterized as "collateral" when the court may resolve it without
22 (re)adjudicating the merits of the claims or materially altering
23 the status of the case on appeal. See Southwest Marine, 242 F3d at
24 1166. The Supreme Court has held that sanctions generally are
25 collateral matters over which the district court is not easily
26 divested of jurisdiction. See Cooter & Gell v Hartmarx Corp, 496
27 US 384 (1990) (holding that a FRCP 41(a)(1) voluntary dismissal
28 does not divest the district court of jurisdiction to entertain a

1 motion for sanctions based on the voluntarily dismissed complaint).

2 GD argues that its motion for sanctions and to declare
3 Gilliam a vexatious litigant constitutes just such a collateral
4 matter. GD bases this argument on its contention that Gilliam's
5 present appeal only involves the issues whether the court's
6 dismissal of the amended complaint and award of § 1988(b) attorney
7 fees was appropriate. See Mot Sanctions (Doc #74) at 6:24-25. In
8 other words, GD contends that the appeal does not involve the
9 issues raised in Gilliam's motions to recuse, to alter or amend the
10 judgment and for sanctions.

11 Gilliam disputes this characterization and argues that
12 imposing sanctions would involve the consideration of issues that
13 are currently before the Ninth Circuit on appeal. Gilliam may be
14 correct about this; the scope of his appeal may be broader than GD
15 has implied. Gilliam's notice of appeal is from the court's April
16 14, 2004, order denying Gilliam's motions to recuse, to alter or
17 amend the judgment and for sanctions. See Liguori Decl (Doc #73)
18 ¶3, Ex A. It is not for the court to determine the scope of the
19 Ninth Circuit's jurisdiction in this matter, but that court may
20 well be faced with consideration of Gilliam's motions to recuse, to
21 alter or amend and for sanctions. That said, even if the appeal is
22 as broad as Gilliam suggests, it may nonetheless not divest this
23 court of jurisdiction over the instant motion.

24 In its motion and reply, GD fails to cite any published
25 Ninth Circuit authority that considers in any detail the issue
26 whether the district court may award Rule 11 sanctions or impose a
27 vexatious litigant order after the district court's disposition of
28 the allegedly frivolous pleadings or motions has been appealed.

1 (GD cites an unpublished 1991 9th Circuit decision (see Mot
2 Sanctions (Doc #74) at 6:14-17). Of course, the court may not,
3 rely on that unpublished case. See Civ L R 7-13; 9th Cir Ct App R
4 36-3.)

5 The Ninth Circuit discussed this issue briefly in United
6 Energy Owners Cmte, Inc v United States Energy Management Systems,
7 Inc, 837 F2d 356 (9th Cir 1988). In United Energy, the Ninth
8 Circuit noted that, although the district court should not have
9 imposed sanctions, the district court had retained jurisdiction to
10 impose those sanctions. 837 F2d at 358. But the district court in
11 United Energy had imposed sanctions based on the plaintiffs'
12 failure to release certain writs of attachment in a timely fashion,
13 rather than on the substantive merits of plaintiffs' pleadings. Id
14 at 360. Further, the Ninth Circuit has affirmed a district court's
15 decision to deny a motion for sanctions, given that the motion
16 asked the district court to, in effect, reconsider a prior motion
17 for similar sanctions that was already on appeal. Trulis v Barton,
18 107 F3d 685, 694-95 (9th Cir 1995).

19 Confronted with somewhat limited precedent, the court
20 must locate this case between the poles of Trulis (where the motion
21 for sanctions required direct reconsideration of an issue on
22 appeal) and United Energy (where the motion for sanctions was
23 entirely collateral). The Supreme Court's guidance in Cooter &
24 Gell is instructive, as it suggests that motions for sanctions (and
25 by extension vexatious litigant orders) are typically collateral
26 matters. The Ninth Circuit's principal concerns in this area seem
27 to be (1) that the district court not disturb orders or judgments
28 that are on appeal and (2) that the district court and court of

1 appeals not do redundant work by simultaneously considering the
2 same issue. See, e g, Masalosaló, 718 F2d at 956 (referring to
3 "the confusion and inefficiency of two courts considering the same
4 issues simultaneously"); cf Southwest Marine, 242 F3d at 1166
5 (stressing that the salient jurisdictional limitation on modifying
6 injunctions pending appeal pursuant to FRCP 62(c) is that "any
7 action taken pursuant to FRCP 62(c) 'may not materially alter the
8 status of the case on appeal'").

9 In the instant case, the court finds that although
10 adjudicating GD's motion might require consideration of some of the
11 issues that are on appeal, it would not affect the merits of any
12 order now on appeal. The jurisdictional bar imposed by a notice of
13 appeal does not prevent the district court from considering matters
14 related to issues pending on appeal; it only forbids reevaluation
15 of the very issues that are on appeal. Such a rule is consistent
16 with the reasoning and result in Cooter & Gell, Masalosaló, United
17 Energy, Trulis and Southwest Marine.

18 Here, GD's motion for Rule 11 sanctions asks the court to
19 make a substantive finding that Gilliam's three motions were
20 objectively meritless. Although that may result in a further
21 elaboration of the court's prior orders, it will not modify them or
22 otherwise venture into matters over which the court of appeals has
23 jurisdiction.

24 There are some small inefficiencies to contend with, but
25 they are not so great that they counsel against retaining
26 jurisdiction under these circumstances. If the Ninth Circuit
27 reverses this court's determinations on the merits of the motions
28 that triggered GD's request for sanctions, this court might need to

1 revisit any sanctions order predicated on the frivolousness of
2 those underlying motions. Similarly, there would be a problem with
3 declaring Gilliam a vexatious litigant: Should the Ninth Circuit
4 reverse the court's previous rulings and remand for further
5 proceedings, it would be an odd result to have enjoined Gilliam
6 from filing any further papers with this court. Both matters can
7 be addressed if, as and when they arise; the court could vacate an
8 award of sanctions and dissolve a vexatious litigant order to allow
9 Gilliam to proceed in accordance with the Ninth Circuit's mandate.

10 For these reasons, the court concludes that it has
11 jurisdiction to impose the sanctions GD requests.

12 IV

13
14 Turning to the merit's of GD's motion for Rule 11
15 sanctions, the court agrees with Gilliam that such a motion is
16 procedurally improper.

17 Rule 11 contains a so-called "safe harbor" provision that
18 requires a party seeking sanctions to serve the Rule 11 motion on
19 the opposing party at least twenty-one days before filing the
20 motion with the district court. FRCP 11(c)(1)(A); see also
21 Brickwood Contractors, Inc v Datanet Engineering, Inc, 369 F3d 385,
22 389 (4th Cir 2004). The safe harbor provision also restricts the
23 party seeking sanctions from continuing to do so unless the
24 challenged pleading is not withdrawn or corrected within the
25 twenty-one-day window. FRCP 11(c)(1)(A); see also Brickwood
26 Contractors, 369 F3d at 389. The safe harbor provisions of Rule 11
27 are mandatory and cannot be avoided simply because the opposing
28 party has received informal notice of the motion. Barber v Miller,

1 146 F3d 707, 710 (9th Cir 1998).

2 In the case at bar, GD acknowledges that it did not
3 comply with the 21-day safe harbor. See Reply (Doc #77) at 6
4 (appealing to out-of-circuit authority for the proposition that
5 "courts retain discretion to award sanctions upon a determination
6 that the movant has 'substantially complied' with [Rule 11]").
7 That Gilliam may have received actual notice of GD's intent is
8 beside the point; the Ninth Circuit has emphasized repeatedly that
9 the safe harbor requirements must be strictly applied and that only
10 a formal motion served twenty-one days before its filing is
11 sufficient for notice purposes. Radcliffe v Rainbow Construction
12 Co, 254 F3d 772, 789 (9th Cir 2000); Barber, 146 F3d at 710.

13 Even assuming that GD served Gilliam with a copy of the
14 motion for sanctions twenty-one days before filing, the court still
15 must find that the motion is procedurally improper. The Ninth
16 Circuit has emphasized that a motion for sanctions must be served
17 before the conclusion of the case or judicial rejection of the
18 allegedly offending papers. Barber, 146 F3d at 710-11. This is
19 because serving the motion after judgment or dismissal essentially
20 deprives the opposing party of an opportunity to withdraw the
21 allegedly offending papers. The court's April 14, 2004, order both
22 disposed of Gilliam's three motions and effectively ended the
23 litigation of this case. Service of the motion for sanctions after
24 the court had ruled on the motions and closed the case, therefore,
25 essentially deprived Gilliam of his right to withdraw the motions.

26 Given these procedural infirmities, the court cannot
27 grant GD's motion for sanctions. The court further notes that,
28 despite its view that Gilliam's three motions were basically

1 frivolous, the court should not impose sanctions on its own
2 initiative pursuant to Rule 11(c)(1)(B). GD has initiated the
3 proceedings for sanctions, not the court. Any sanctions the court
4 might impose would, as a practical matter, be imposed as a result
5 of GD's requests. See Radcliffe, 254 F3d at 789; Barber, 146 F3d
6 at 711.

7 Accordingly, GD's motion for Rule 11 sanctions is DENIED.

8
9 V

10 GD also moves the court to declare Gilliam a vexatious
11 litigant. Mot Sanctions (Doc #74) at 9:16-10:21. A district court
12 has power under the All Writs Act, 28 USC § 1651(a), to enjoin
13 litigants who abuse the judicial system. Tripati v Beaman, 878 F2d
14 351, 352 (9th Cir 1989); Walker v Stanley, 231 BR 343, 350 (N D Cal
15 1999) (Ware, J); Waldron v Washington Mutual, 1999 US Dist LEXIS
16 11941, *11 (N D Cal) (Jenkins, J); see DeLong v Hennessey, 912 F2d
17 1144, 1147 (9th Cir 1999) (recognizing that "there is strong
18 precedent establishing the inherent power of federal courts to
19 regulate the activities of abusive litigants by imposing carefully
20 tailored restrictions under the appropriate circumstances"). "Even
21 onerous conditions may be imposed upon a litigant as long as they
22 are designed to assist the district court in curbing the particular
23 abusive behavior involved." Tripati, 878 F2d at 352 (internal
24 quotation and citation omitted).

25 The Ninth Circuit has established four guidelines that a
26 court must follow in enjoining a vexatious litigant: (1) the
27 litigant must be provided with notice and a chance to be heard
28 before the court enters the order; (2) the court should establish

1 an adequate record for review, that is, a listing of the cases
2 and/or abusive activities undertaken by the litigant; (3) the court
3 must make a substantive finding that the litigant's activities were
4 frivolous and harassing; and (4) the court must narrowly tailor the
5 order to deter the specific vice encountered. DeLong, 912 F2d at
6 1147-48.

7
8 A

9 In the case at bar, the first DeLong requirement is
10 readily satisfied. First, Gilliam has been provided with notice
11 and an opportunity to be heard on the vexatious litigant issue.
12 Defendants filed proof of service of the corrected motion on July
13 12, 2004, and the court issued to Gilliam an OSC why that motion
14 should not be treated as unopposed on August 16, 2004. On August
15 19, 2004, Gilliam filed an opposition to the motion, further
16 demonstrating that he received notice. Doc #75. Although the
17 court did not take oral argument on the vexatious litigant issue,
18 "[t]he notice and opportunity requirement does not * * * require an
19 in-person hearing in the district court." Tripati, 878 F2d at 354.
20

21 B

22 Second, the court is quite familiar with Gilliam's
23 history of vexatious filings. In this case, Gilliam has taken the
24 following unwarranted actions:

- 25
- 26 • After the court's order dismissing the original complaint
27 (Doc #31), Gilliam filed an amended complaint that failed
28 to address the weaknesses in the original complaint (Doc

1 #33) ;

- 2 • After GD filed a motion to dismiss the amended complaint
3 (Doc #39), Gilliam failed timely to file an opposition,
4 necessitating the issuance of the September 11, 2003, OSC
5 (Doc #42) ;
- 6 • After the September 11 OSC, Gilliam filed an untimely
7 opposition (Doc #45) in which he advanced arguments that
8 the court had previously rejected;
- 9 • After the court granted GD's motion for § 1988 attorney
10 fees and requested supplemental briefing on the amount of
11 such fees (Doc #48), Gilliam filed a response that
12 addressed the merits of GD's motion for fees, rather than
13 the amount of such fees (Doc #53) ;
- 14 • After the court issued its final order on the attorney
15 fee award issue (Doc #60), Gilliam filed three frivolous,
16 harassing motions:
- 17 ▶ The motion to recuse (Doc #62) ;
- 18 ▶ The motion to alter or to amend the judgment (Doc
19 #61) ; and
- 20 ▶ The motion for Rule 11 sanctions (Doc #62) ; and
- 21 • After GD filed the present motion for sanctions and to
22 declare Gilliam a vexatious litigant (Doc #74), Gilliam
23 failed to respond in a timely fashion, necessitating the
24 issuance of another OSC on August 16, 2004 (Doc #75) .

25

26 GD has also presented evidence that Gilliam filed a
27 bankruptcy petition in bad faith in the bankruptcy court of this
28 judicial district. See Liguori Decl (Doc #73) ¶5, Ex C. The court

1 has also been made aware of at least five other cases, both in this
2 court and in state court, in which Gilliam makes the same or
3 similar claims as he made in this case. See 5/27/03 Order (Doc
4 #31) at 4:1-19 (taking judicial notice of the filings in (1) Cooper
5 v Gilliam, C 02-499 VRW; (2) Gilliam v Napa County, et al, C 02-705
6 WHA; (3) Gilliam v Austin, et al, C 02-1389 PJH; (4) Cooper v
7 Gilliam, SCV 227783 (Sonoma County Super Ct, Aug 22, 2001); and (5)
8 Cooper v Gilliam, D 02-659 (Contra Costa Super Ct, Feb 15, 2002)).
9 While it is unclear whether all of these cases were vexatious,
10 their existence and numerosity is notable. One Sonoma County judge
11 found the state court actions vexatious enough to enjoin Gilliam
12 from filing any new pro se litigation in state court. See Liguori
13 Decl (Doc #73) ¶4, Ex B.

C

14
15
16 Next, the court turns to the third DeLong requirement,
17 which is the heart of the matter: whether the evidence submitted
18 to the court warrants a substantive finding that Gilliam's
19 litigation activities were frivolous or harassing. In making this
20 determination, the court must consider both the number and the
21 content of Gilliam's filings. DeLong, 912 F2d at 1148. The court
22 should examine several factors in this regard: (1) Gilliam's
23 history of litigation and in particular whether it entailed
24 vexatious, harassing or duplicative suits or filings; (2) Gilliam's
25 motive in pursuing the litigation, i e, whether Gilliam has an
26 objective good faith expectation of prevailing; (3) whether Gilliam
27 is represented by counsel; (4) whether Gilliam has caused needless
28 expense to other parties or has posed an unnecessary burden on the

1 courts and their personnel; (5) whether other sanctions would be
2 adequate to protect the courts and other parties; and (6) whether
3 Gilliam is likely to continue to abuse the judicial process. Safir
4 v United States Lines, Inc, 792 F2d 19, 24 (2d Cir 1986); Walker,
5 231 BR at 350-51.

1

6
7
8 With respect to the first factor, it is clear that
9 Gilliam has engaged in a pattern of repetitive and often vexatious
10 litigation tactics. Gilliam has engaged in at least six different
11 lawsuits that appear to relate in some fashion to the claims at
12 issue in this case. See 5/27/03 Order (Doc #31) at 4:1-19.
13 Gilliam has also filed a bad faith petition for bankruptcy in this
14 district. See Liguori Decl (Doc #73) ¶5, Ex C. And Gilliam's
15 tactics in the present suit have, by any measure, been improper and
16 vexatious. As the court described in detail in this order and in
17 previous orders, Gilliam has repeatedly defied court orders, failed
18 to respond to GD's motions in a timely fashion, made frivolous
19 arguments in response to those motions and filed frivolous motions
20 for improper purposes. There can be no question that Gilliam's
21 litigation history evinces a pattern of vexatiousness.

2

22
23
24 As to the second factor, Gilliam cannot at this point
25 have an objective good faith expectation of prevailing. Gilliam
26 has twice had his complaint dismissed. After the first dismissal,
27 Gilliam filed an amended complaint that failed to correct the flaws
28 in the first complaint. Not only did this suggest that Gilliam had

1 no basis for correcting those flaws, but the complaint was
2 apparently filed for the purpose of challenging the court's
3 previous ruling. Gilliam's further vexatious filings have been
4 directed to ancillary matters or have tried improperly to reopen
5 issues the court had already decided. It is thus apparent that
6 Gilliam "does not have an objective good faith belief of
7 prevailing" but rather continues to pursue the matters "solely to
8 cause the [d]efendants (and the [c]ourt) to expend needless time
9 and incur expense." Ray v Lowder, 2003 US Dist LEXIS 17681, at *9
10 (M D Fla) (Jones, J).

11
12 3

13 The third factor regards whether the litigant is
14 represented by counsel. Although Gilliam has evidently been
15 assisted by counsel in related proceedings, he has proceeded pro se
16 in the present lawsuit. But given his frequent filings, it is
17 clear that Gilliam is quite familiar with the federal and state
18 court systems. Indeed, Gilliam has a law degree and professional
19 experience clerking for licensed attorneys. See Gilliam Decl (Doc
20 #55) ¶¶5, 6. Gilliam is thus "not the common type of pro se
21 litigant[] who would normally be entitled to more 'solicitous and
22 generous' consideration." Castro v United States, 584 F Supp 252,
23 264 (D PR 1984) (Perez-Giminez, J); see also Walker, 231 BR at 351
24 (noting that, despite the debtors' pro se status, nonetheless "they
25 are familiar with the bankruptcy system"). The fact that Gilliam
26 is not presently represented by counsel is thus of little moment.

27
28 4

1 With respect to the fourth factor, Gilliam has caused
2 needless expense to the various defendants in this case and has
3 foisted unnecessary burdens on the court. As a result of Gilliam's
4 meritless filings, GD has been awarded its reasonable attorney fees
5 under § 1988. Had the court found it procedurally proper, the
6 court would have also sanctioned Gilliam pursuant to FRCP 11. More
7 to the point, Gilliam has filed repeated groundless motions and
8 other papers.

9 In particular, all three of Gilliam's most recent motions
10 were legally frivolous and undoubtedly presented for an improper
11 purpose. The court finds that Gilliam's motion to recuse (Doc #62)
12 was frivolous and legally unreasonable. In its previous order, the
13 court noted a number of substantive problems with Gilliam's motion
14 to recuse, including: (1) the motion was unaccompanied by an
15 affidavit as required by 28 USC § 144; and (2) the court's receipt
16 of unsolicited letters from a pro se party provided no reasonable
17 basis for the undersigned to recuse himself. 4/14/04 Order (Doc
18 #68) at 6:6-10:16. The court expressly found that "the motion is
19 both frivolous and likely interposed for delay" and did not even
20 warrant referral to another judge for determination, as is the
21 usual practice of the court (see Civ L R 3-15). Id at 12:21-26.
22 By any standard, Gilliam's motion for recusal was objectively
23 unreasonable.

24 Gilliam's Rule 59(e) motion to alter or amend the court's
25 previous orders (Doc #61) was also legally frivolous. In its
26 previous order, the court noted that Gilliam's motion was
27 procedurally improper because it was not noticed for a hearing date
28 and thus violated Civ L R 7-2(a). 4/14/04 Order (Doc #68) at 13:7-

1 16. The court also rejected all of Gilliam's substantive
2 arguments, in large part because most of those arguments were
3 simply attempts to coerce the court into reconsidering arguments it
4 had rejected in connection with its November 17, 2003, order
5 dismissing the case and its January 22, 2004, order awarding GD its
6 attorney fees. See *id* at 14:3-20:6. At various points in that
7 analysis, the court characterized Gilliam's Rule 59(e) arguments as
8 "ridiculous" (*id* at 14:9), "patently unwarranted" (*id* at 16:12) and
9 "unintelligible" (*id* at 19:11). The court concluded its analysis
10 of this motion by stating that "none of the repetitive and perhaps
11 frivolous arguments that Gilliam raises in his Rule 59(e) motion
12 justify a finding by the court that it committed clear error or
13 that the previous orders were manifestly unjust." *Id* at 20:7-10.
14 The court's view of the reasonableness of Gilliam's Rule 59(e)
15 motion is thus clear from its previous order, and the court
16 reaffirms its previous characterization of the motion as legally
17 frivolous.

18 Likewise, Gilliam's motion for Rule 11 sanctions against
19 GD (Doc #63) was frivolous. The court has already noted that this
20 motion suffered from the same Civ L R 7-2(a) defect as the motion
21 to alter or amend. 4/14/04 Order (Doc #68) at 20:26-21:7. The
22 court further noted that Gilliam's motion, which was based on
23 allegedly improper actions by GD in the South Carolina bankruptcy
24 court, was "substantively unwarranted" because the court had no
25 jurisdiction over the South Carolina proceedings and because
26 Gilliam failed to present any factual documentation of GD's
27 improper motivations. *Id* at 21:8-19. The court agrees with GD
28 that Gilliam's motion for sanctions was "a thinly-veiled attempt at

1 a tit-for-tat response to [GD's] award of attorney[] fees and
2 expenses." See Mot Sanctions (Doc #74) at 9:1-2. As such,
3 Gilliam's motion for sanctions was objectively unreasonable and
4 legally frivolous.

5 Furthermore, Gilliam has consistently failed to respond
6 to motions brought by defendants. This has not only caused
7 defendants to incur unnecessary expenses, but it has also resulted
8 in repeated delays and an enormous waste of the court's time and
9 energy. In short, the unnecessary burdens placed by Gilliam on
10 defendants and the court are numerous, repeated and inexcusable.

11
12 5

13 Considering the fifth factor, it is apparent that no
14 lesser sanction would be adequate to prevent Gilliam from
15 conducting further harassing activity. In Safir, the Second
16 Circuit upheld the district court's decision to enjoin the
17 plaintiff from filing further vexatious litigation, stating:

18 We therefore cannot ignore the obvious fact
19 that mere dismissal of this action will not
20 hinder [plaintiff] from initiating further
21 similar proceedings. [Plaintiff's] abuse of the
22 judicial process, despite his subjective
23 conviction that he has suffered an unremedied
injury, cannot be countenanced. In addition,
[plaintiff's] failure to pay costs and fees
already assessed against him indicates that
other types of sanctions would be unavailing.

24 Safir, 792 F2d at 25. If the history of these proceedings
25 demonstrates anything, it is that monetary sanctions are
26 ineffective to encourage Gilliam to obey the court's orders or to
27 cease his vexatious filings. In fact, given Gilliam's rash of
28 frivolous filings in the wake of the court's order awarding \$

1 1988(b) attorney fees, the imposition of monetary sanctions appears
2 to have precisely the opposite effect. Although the court would be
3 willing to impose substantial monetary sanctions if Gilliam
4 continues his course of vexatious filings, the court has reason to
5 doubt their efficacy. Further, merely relying on the court's
6 previous dismissal of the case is not likely to be effective, as
7 adverse rulings have not stopped Gilliam -- indeed, dismissing the
8 case seems to have encouraged such action. As in Safir, no lesser
9 sanctions are sufficient.

6

12 With respect to the sixth and final factor, it is quite
13 likely that Gilliam will continue to abuse the litigation process.
14 Gilliam's repetitive pattern of filing frivolous motions,
15 disobeying court rulings and the like evince his propensity to
16 continue to use the legal system to carry out his misguided quest.
17 And if past behavior is any predictor, this order may well spur
18 Gilliam into action again. In short, the court finds that it has
19 every reason to determine that Gilliam's actions are frivolous and
20 vexatious. Thus, the third DeLong guideline is satisfied.

D

23 Having determined that the first three DeLong guidelines
24 support an order enjoining Gilliam in some way, the court must now
25 meet the fourth guideline by fashioning an order that is narrowly
26 tailored to remedy the particular ills posed by Gilliam. In
27 determining the scope of the order, the court is mindful that
28 Gilliam is entitled to some guidelines as to what he must do to

1 obtain the court's permission to file papers or an action.

2 Triparti, 878 F2d at 354.

3 Accordingly, the court GRANTS GD's motion to declare
4 Gilliam a vexatious litigant (Doc #74). The court considers relief
5 to be appropriate as follows:

6
7 William Jeffrey Gilliam ("Gilliam"), and his agents, servants,
8 employees, attorneys, and persons in active concert and
9 participation with them who receive actual notice of this order are
10 hereby:

- 11
12 (1) permanently enjoined from filing any additional pleadings
13 or papers in the case at bar, except as described in
14 paragraphs (3), (4), (5) and (6); and
- 15 (2) permanently enjoined from attempting to relitigate, by
16 commencing a lawsuit or any legal proceeding against
17 General Dynamics Corporation or any of the other
18 defendants in this case, issues related to Gilliam's June
19 13, 2001, arrest and the subsequent emergency protective
20 order, except as described in paragraphs (3), (4), (5)
21 and (6).
- 22 (3) Should Gilliam seek to file papers or suits as described
23 in paragraphs (1) and (2), he shall file a petition for
24 leave to file those papers or suits with the general duty
25 judge of this court.
- 26 (4) Should Gilliam seek to file papers or suits as described
27 in paragraphs (1) and (2), he must first post a bond with
28 the court in the amount of \$25,000 to cover costs, fees

and sanctions that may be levied against him.

(5) This injunction does not apply to any filings Gilliam may make with this court or the Ninth Circuit Court of Appeals in connection with his present appeal or any other appeal in this matter.

(6) Should the Ninth Circuit reverse the court's judgment in this case and remand for further proceedings, this injunction shall be automatically dissolved upon issuance of the Ninth Circuit's mandate, but only as it pertains to this case as described in paragraph (1), and not as it pertains to any future litigation covered by paragraph (2).

(7) Failure to comply with the terms of this injunction shall be sufficient grounds for this court or any other court to strike the filing, dismiss the complaint with prejudice and/or impose a sanction for contempt of court, as circumstances require.

VI

Gilliam has also filed a "request for an order to show cause" directed at GD's registration in the District of South Carolina of this court's attorney fee judgment against him. Doc #79. Gilliam insists that by (1) obtaining a certified judgment from the clerk, (2) registering the judgment in the District of South Carolina and (3) withdrawing that registration a few weeks later, GD "abused the process and procedures of this Court." Doc #79 at 1:25. Gilliam's reasoning is that 28 USC § 1963 (which provides for registration of judgments) permits registration only

1 after a judgment is final following any appeal, and GD registered
2 the fee award judgment despite the pendency of Gilliam's appeal of
3 the fee award.

4 Matters seem to have resolved themselves. Indeed, GD had
5 withdrawn its registration in the District of South Carolina even
6 before Gilliam filed his request for an order to show cause. See
7 Gilliam Decl (Doc #80) Ex 2 (letter from GD withdrawing
8 registration of judgment). Unlike Gilliam, the court detects
9 nothing sinister in GD's actions. Accordingly, Gilliam's request
10 for an order to show cause is DENIED.

11
12 VII

13 For the foregoing reasons, the court DENIES GD's motion
14 for Rule 11 sanctions and GRANTS its motion to declare Gilliam a
15 vexatious litigant (Doc #74). Despite the fact that the court
16 agrees with GD that Gilliam's conduct in this case is sanctionable
17 under Rule 11, the court cannot as a procedural matter impose such
18 sanctions. The court has, however, enjoined further vexatious
19 conduct by Gilliam in this action, and the clerk is DIRECTED to
20 enter the permanent injunction set forth above. Gilliam's request
21 for an order to show cause (Doc #79) is DENIED.

22
23 IT IS SO ORDERED.

24 

25
26 VAUGHN R WALKER

27 United States District Chief Judge
28